

Article 6

Acupuncture Act of South Carolina

Section 40-47-700. This article may be cited as the 'Acupuncture Act of South Carolina'.

Section 40-47-705. For purposes of this article:

(1) 'Acupuncture' means a form of health care developed from traditional and modern oriental concepts for health care that employs oriental medical techniques, treatment, and adjunctive therapies for the promotion, maintenance, and restoration of health and the prevention of disease. The practice of acupuncture does not include:

(a) osteopathic medicine and osteopathic manipulative treatment;

(b) 'chiropractic' or 'chiropractic practice' as defined in Section 40-9-10; or

(c) 'physical therapy' as defined in Section 40-45-20 or therapies allowed as part of the practice of physical therapy.

(2) 'Auricular (ear) detoxification therapy' means the insertion of disposable sterile acupuncture needles into the five auricular acupuncture points stipulated by the National Acupuncture Detoxification Association protocol for the sole purpose of treatment of chemical dependency, detoxification, and substance abuse.

(3) 'Board' means the State Board of Medical Examiners.

(4) 'Committee' means the Acupuncture Advisory Committee as established by this article as an advisory committee responsible to the board.

(5) 'NADA' means the National Acupuncture Detoxification Association.

(6) 'NCAAOM' means the National Certification Commission for Acupuncture and Oriental Medicine.

(7) 'ACAOM' means Accreditation Commission for Acupuncture and Oriental Medicine.

(8) 'Auricular therapy' means the insertion of disposable needles into and limited only to the ear, to treat a limited number of conditions.

Section 40-47-710.

(A) There is established the Acupuncture Advisory Committee to be composed of five members to be appointed by the Board of Medical Examiners for terms of four years and until their successors are appointed and qualify. Three members must be licensed to practice acupuncture under this article; one of whom has practiced acupuncture for a minimum of three years; one member must be licensed to practice medicine under this chapter and may be an acupuncturist; and one member must be

from the State at large. The advisory committee members shall receive mileage, per diem, and subsistence as provided by law for members of state boards, committees, and commissions and have such responsibilities as provided for in this article and as the board may determine.

(B) Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term. The board, after notice and opportunity for hearing, may remove any member of the committee for negligence, neglect of duty, incompetence, revocation or suspension of license, or other dishonorable conduct. No member may serve more than two full four-year terms consecutively but may be eligible for reappointment four years from the date the last full four-year term expired.

(C) The committee shall meet at least two times yearly and at other times as may be necessary. Four members constitute a quorum. At its initial meeting, and at the beginning of each year thereafter, the committee shall elect from its membership a chairman, vice chairman, and secretary to serve for a term of one year.

(D) The committee shall receive and account for all monies under the provisions of this article and shall pay all monies collected to the board for deposit with the State Treasurer as provided for by law.

Section 40-47-715.

(A) The committee may:

(1) recommend regulations to the board relating to professional conduct to carry out the provisions of this article including, but not limited to, professional certification and the establishment of ethical standards of practice for persons holding a license to practice as acupuncturists, auricular therapists, and auricular detoxification specialists in this State;

(2) recommend requirements to the board for continuing professional education acupuncturists, auricular therapists, and auricular detoxification specialists to the board;

(3) request and receive the assistance of state educational institutions or other state agencies and recommend to the board information of consumer interest describing the regulatory functions of the advisory committee and the procedures by which consumer complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(B) The committee shall:

(1) conduct hearings and keep records and minutes necessary to carry out its functions;

(2) provide notice of all hearings authorized under this article pursuant to the Administrative Procedures Act;

(3) determine the qualifications and make recommendations regarding the issuance of licenses to qualified acupuncturists, auricular therapists, and auricular detoxification specialists;

(4) recommend to the board whether to issue or renew licenses under those conditions prescribed in this article;

(5) keep a record of its proceedings and a register of all licensees, including their names and last known places of employment and residence. The board shall annually compile and make available a list of acupuncturists, auricular therapists, and auricular detoxification specialists authorized to practice in this State. An interested person may obtain a copy of this list upon application to the board and payment of an amount sufficient to cover the cost of printing and mailing;

(6) report annually to the board on duties performed, actions taken, and recommendations made;

(7) hear disciplinary cases and recommend findings of fact, conclusions of law, and sanctions to the board. The board shall conduct a final hearing at which it shall make a final decision;

(8) perform such duties and tasks as may be delegated to the committee by the board.

Section 40-47-720.

(A) Each applicant for a license to practice acupuncture shall:

(1) submit a completed application as prescribed by the board;

(2) submit fees as provided for in Section 40-47-800;

(3) hold an active certification in acupuncture by the National Commission for the Certification of Acupuncturists and Oriental Medicine;

(4) be of good moral character;

(5) not have pled guilty or nolo contendere to or been convicted of a felony or crime of moral turpitude.

(B) The application must be complete in every detail before it may be approved. When the administrative staff of the board has reviewed the entire application for completeness and correctness, has found the applicant eligible, and the applicant has appeared before the committee or a designated board member, a temporary license may be issued. At the next committee meeting the entire application must be considered, and if qualified, the committee may recommend to the board that a permanent license be issued. If the committee declines to recommend issuance of a permanent license, the committee may extend or withdraw the temporary license.

Section 40-47-725.

(A) (1) An acupuncturist who is currently approved by the board to practice acupuncture in this State, who has remained in good standing, and who has successfully completed a nationally recognized clean needle technique course approved by the board must receive initial licensure under this article after submitting:

(a) a completed application as prescribed by the board;

(b) fees as provided for in Section 40-47-800.

(2) However, a license issued pursuant to subsection (A)(1) is only valid for two years. Thereafter for license renewal, the individual must hold an active certification from the National Commission for the Certification of Acupuncture and Oriental Medicine and satisfy the licensure and renewal requirements prescribed in this article.

(B) An individual who has continuously practiced acupuncture in this State since 1980, who has remained in good standing, must be issued a license and renewal licenses without meeting the requirements of this chapter after submitting:

(1) a completed application as prescribed by the board; and

(2) fees as provided for in Section 40-47-800.

Section 40-47-730.

(A) An applicant for a license to perform auricular therapy:

(1) must be twenty-one years of age;

(2) shall submit a completed application as prescribed by the medical board;

(3) shall submit fees as provided for in Section 40-47-800;

(4) shall provide evidence of certification as having been trained to utilize auricular points only, in addition to those utilized by a detoxification specialist;

(5) successful completion of a national certified program approved by the Acupuncture Advisory Committee and the State Board of Medical Examiners;

(6) successful completion of a Clean Needle Technique course approved by the board.

(B) The application must be complete in every detail before it may be approved. When the administrative staff of the board has reviewed the entire application for completeness and correctness, has found the applicant eligible, and the applicant has appeared before the committee or a designated board member, a temporary license may be issued. At the next committee meeting the entire application must be considered, and if qualified, the committee may recommend to the board that a permanent license be issued, if the committee declines to recommend issuance of a permanent license, the committee may extend or withdraw the temporary license.

Section 40-47-735.

(A) An applicant for a license to perform auricular detoxification therapy:

(1) must be at least twenty-one years of age;

(2) shall submit a completed application as prescribed by the board;

(3) shall submit fees as provided for in Section 40-47-800;

(4) shall have successfully completed a nationally recognized training program in auricular Detoxification therapy for the treatment of chemical dependency detoxification and substance abuse, as approved by the board;

(5) shall have successfully completed a nationally recognized clean needle technique course approved by the board.

(B) The application must be complete in every detail before it may be approved. When the administrative staff of the board has reviewed the entire application for completeness and correctness, has found the applicant eligible, and the applicant has appeared before the committee or a designated board member, a temporary license may be issued. At the next committee meeting the entire application must be considered, and if qualified, the committee may recommend to the board that a permanent license be issued. If the committee declines to recommend issuance of a permanent license, the committee may extend or withdraw the temporary license.

Section 40-47-740.

(A) An auricular therapist or an auricular detoxification specialist who is currently approved by the board to practice in this State, who has remained in good standing, and who has successfully completed a nationally recognized clean needle technique course approved by the board must receive initial licensure under this article after submitting:

(1) a completed application as prescribed by the board;

(2) fees as provided for in Section 40-47-800.

(B) However, a license issued pursuant to subsection (A) is only valid for two years. Thereafter for license renewal the individual must have successfully passed a board-approved nationally recognized training program in auricular therapy or auricular detoxification and satisfy the licensure requirements prescribed in this article.

Section 40-47-745.

(A) It is unlawful for a person not licensed under this article to hold himself out as an acupuncturist, auricular therapist, or auricular detoxification specialist. The titles 'Licensed Acupuncturist' (L.Ac.) and 'Acupuncturist' may only be used by a person licensed to practice acupuncture pursuant to this article. Further, a person licensed to practice auricular therapy or auricular detoxification may not practice acupuncture

or hold himself out as an acupuncturist. The title 'Auricular Detoxification Specialist' (ADS) may only be used by a person licensed to practice auricular detoxification therapy pursuant to this article. Possession of a license as an auricular therapist or an auricular detoxification specialist does not, by itself, entitle a person to identify himself or herself as an acupuncturist. A person who holds himself out as an acupuncturist, auricular therapist, or auricular detoxification specialist without being licensed pursuant to this article, during a period of suspension, or after his or her license has been revoked by the board is guilty of a misdemeanor and, upon conviction, must be fined not more than three hundred dollars or imprisoned not more than ninety days, or both.

(B) For the purpose of any investigation or proceeding under this article, the board or a person designated by the board may administer oaths and affirmations, subpoena witnesses, take testimony, and require the production for any documents or records which the board considers relevant to the inquiry.

(C) If the board has sufficient evidence that a person is violating a provision of this article, the board, in addition to all other remedies, may order the person to immediately cease and desist from this conduct. The board may apply to an administrative law judge as provided under Article 5, Chapter 23 of Title 1 for an injunction restraining the person from this conduct. An administrative law judge may issue a temporary injunction ex parte and upon notice and full hearing may issue any other order in the matter it considers proper. No bond may be required of the board by an administrative law judge as a condition to the issuance of an injunction or order contemplated by the provisions of this section.

(D) Each communication, whether oral or written, made by or on behalf of a person or firm to the board or a person designated by the board to investigate or otherwise hear matters relating to the revocation, suspension, or other restriction on a license or other discipline of a license holder, whether by way of complaint or testimony, is privileged and exempt from disclosure for any reason except to the extent disclosed in proceedings before the board. No action or proceeding, civil or criminal, may lie against the person or firm for the communication except upon other proof that the communication was made with malice.

(E) No provision of this article may be construed as prohibiting the respondent or his legal counsel from exercising the respondent's constitutional right of due process under the law or prohibiting the respondent from normal access to the charges and evidence filed against him as part of due process under the law.

Section 40-47-750.

Auricular therapy may take place under the supervision of a licensed acupuncturist or a person licensed to practice medicine under this chapter. A treatment by an auricular therapist is strictly limited to inserting needles into the ear. Inserting needles anywhere else on the body is considered practicing acupuncture without a license.

Section 40-47-755.

Auricular detoxification therapy may take place under the direct supervision of a licensed acupuncturist or a person licensed to practice medicine under this chapter. A

treatment by an auricular detoxification specialist is strictly limited to the five ear-point treatment protocol for detoxification, substance abuse, or chemical dependency as stipulated by NADA.

Section 40-47-760. This article does not apply to:

(1) the practice of acupuncture if it is an integral part of the program of study by students enrolled in an acupuncture education program under the direct clinical supervision of a licensed acupuncturist with at least five years of clinical experience and the program is accredited or is a candidate for accreditation or is actively seeking accreditation from ACAOM;

(2) a person employed as an acupuncturist or an auricular detoxification specialist by the United States Government if these services are provided solely under the direction or control of the United States Government.

Section 40-47-765.

Misconduct constituting grounds for revocation, suspension, probation, reprimand, restrictions, or denial of a license must be found when an acupuncturist, auricular therapist, or auricular detoxification specialist:

(1) has knowingly allowed himself or herself to be misrepresented as a medical doctor;

(2) has filed or has had filed on his or her behalf with the board any false, fraudulent, or forged statement or documents;

(3) has performed any work assignment, task, or other activity which is outside the scope of practice of licensure;

(4) misuses alcohol or drugs to such a degree to render him or her unfit to practice;

(5) has been convicted of a felony or a crime involving moral turpitude or drugs;

(6) has sustained any physical or mental disability which renders further practice dangerous to the public;

(7) has engaged in any dishonorable or unethical conduct that is likely to deceive or harm patients;

(8) has used or made any false or fraudulent statement in any document connected with practice or licensure;

(9) has obtained or assisted another person in obtaining fees under dishonorable, false, or fraudulent circumstances;

(10) has violated or conspired with another person to violate any provision of this article;

(11) otherwise demonstrates a lack of the ethical or professional competence required to practice.

(12) has failed to refer to a licensed medical doctor or dentist, as appropriate, a patient whose medical condition should have been determined to be beyond their scope of practice; or

(13) continues to provide acupuncture, auricular detoxification therapy, or auricular therapy services to any patient who the licensee treats at least one time per month for three consecutive months, and has not demonstrated clinical improvement, unless the licensee provides the patient with written notice, on or before the expiration of the third month, that the patient may need to seek a medical diagnosis from a licensed medical doctor or dentist before continuing with acupuncture, auricular detoxification therapy, or auricular therapy services, unless the patient was referred to the licensee by a licensed medical doctor or dentist.

Upon a finding of misconduct, the board may impose any sanction that the board is otherwise authorized to impose for misconduct under this chapter.

Section 40-47-770.

The board or a person designated by the board may make unscheduled inspections of any office or facility employing an acupuncturist or auricular detoxification specialist.

Section 40-47-775.

A person who holds a license issued in accordance with this article and who is engaged in the active practice of acupuncture, or the active practice of auricular therapy or the active practice of auricular detoxification, shall display the license in an appropriate and conspicuous location in the person's place of practice.

Section 40-47-780.

(A) An acupuncture license issued under this article must be renewed biennially if the person holding the license:

- (1) submits a completed license renewal application as prescribed by the board;
- (2) submits the applicable fees provided for in Section 40-47-800;
- (3) is not in violation of this article at the time of application for renewal;
- (4) fulfills requirements for continuing education and professional development, as prescribed by the board in regulation;
- (5) remains actively certified by the NCCAOM.

(B) An auricular therapist or auricular detoxification specialist license issued under this article must be renewed Biennially if the person holding the license:

- (1) submits a completed license renewal application prescribed by the board;
- (2) submits the applicable fees provided for in Section 40-47-800;
- (3) is not in violation of this article or any regulation promulgated under this article at the time of application for renewal;
- (4) fulfills requirements for continuing education and professional development as prescribed by the board in regulation;
- (5) remains active in the practice of auricular therapy or auricular detoxification.

Section 40-47-785.

Under procedures and conditions established by the board, a license holder may request that his or her license be declared inactive. The licensee may apply for active status at any time and, upon meeting the conditions established by the board in regulation, may be declared active.

Section 40-47-790.

No person licensed under this article may advertise or hold himself or herself out to the public as being authorized to practice medicine under this chapter.

Section 40-47-800.

Fees for acupuncturist, auricular therapist, and auricular detoxification specialist licensure must be established and adjusted biennially in accordance with Section 40-1-50(D) to ensure that they are sufficient but not excessive to cover expenses including the total of the direct and indirect costs to the State for the operations of the committee:

- (1) initial licensing fee;
- (2) renewal of license fee;
- (3) late renewal fee;
- (4) reactivation application fee.

Section 40-47-810.

Nothing in this article may be construed to require third party reimbursement directly to an acupuncturist, auricular therapist, or auricular detoxification specialist for services rendered."

Initial appointees

SECTION 2.

(A) Of the initial appointees to the Acupuncture Advisory Board established pursuant to Section 40-47-710 of the 1976 Code, as added by this section, a member who satisfies the requirements to be licensed as an acupuncturist may be appointed prior to obtaining licensure. Subsequent appointees must be licensed as required by Section 40-47-710.

(B) Of the initial appointees to the advisory board, two acupuncturists shall serve terms of four years, one individual licensed to practice medicine under Chapter 47, Title 40 of the 1976 Code and the at-large consumer member shall serve terms of three years, and one acupuncturist shall serve a term of two years.

Continued practice

SECTION 3.

An individual who prior to this act's effective date was approved pursuant to Section 40-47-70 of the 1976 Code to engage in the practice of acupuncture who does not meet the requirements of Section 40-47-735 of the 1976 Code, as added by Section 1 of this act, may continue to practice acupuncture and has two years from this act's effective date to comply with the provisions of Section 40-47-735.

Repeal

SECTION 4.

Sections 40-47-70 and 40-47-75 of the 1976 Code are repealed.